

**STATE OF CALIFORNIA  
REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL COAST REGION**

**STAFF REPORT FOR REGULAR MEETING OF JULY 28-29, 2016**

Prepared on July 10, 2016

**ITEM NUMBER:** 6

**SUBJECT:** Process and Timing of Efforts to Replace or Renew the  
Agricultural Regulatory Order

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**This Action:** Informational Item

**DISCUSSION**

According to California law, waivers of waste discharge requirements may not exceed five years in duration. The current agricultural regulatory order, Order No. R3-2011-0012 (ag order version 2.0), was adopted in March 2012 and expires on March 14, 2017. To allow uninterrupted regulation of discharges of waste from irrigated agricultural operations, the Central Coast Water Board must act to renew the existing waiver or adopt a new waiver prior to this expiration date.

Staff plans to present a new general waiver for Central Coast Water Board consideration prior to the expiration date. The proposed 2017 ag order (version 3.0) will be largely unchanged from the current order in most aspects, but will have new compliance dates. This proposed 2017 ag order will not address currently unresolved ag-order-related litigation and petitions, as it is not likely that these outstanding issues will be decided with sufficient time to include within the proposed 2017 ag order in March 2017. The proposed 2017 ag order will have a term of five years. However, Central Coast Water Board staff will accelerate development of a proposed ag order version 4.0, which will contain any changes necessitated by decisions from currently unresolved litigation and petitions and will also incorporate "lessons learned" elements from implementing version 2.0; we anticipate that development of ag order version 4.0 will take less than the five-year term of ag order version 3.0. During the term of ag order version 3.0, Central Coast Water Board staff will provide regular updates to the board on the status of litigation, petitions, and the development of components associated with ag order version 4.0, in addition to status checks on order implementation.

This informational item provides transparency for stakeholders with respect to Central Coast Water Board staff's proposed path forward on ag order version 3.0 and provides an opportunity for stakeholder comment and for the Board to provide direction to staff. Staff has just started planning and scheduling of order development for ag order version 3.0 and associated outreach efforts, and as a result, detailed discussion of the contents of the new order is premature.

**Anticipated Scope of Changes and Additions to the Current Order**

Updated Compliance Dates: The current ag order version 2.0 and associated monitoring and reporting programs have various compliance dates, all of which will have passed by the

expiration date of the order in March 2017. Staff will likely propose updating or removing these dates without significantly modifying the associated requirements themselves. For example, the current order requires that fertigation systems have backflow-prevention devices installed by March 1, 2013. Staff will likely propose leaving the requirement and removing the associated compliance date. During the transition from ag order version 2.0 to version 3.0, staff will likely propose continuation of existing surface-water-monitoring programs for at least for one year.

Anti-Degradation Findings: The level of effort required to comply with the Anti-Degradation Policy (SWRCB Resolution No. 68-16, *Statement of Policy with Respect to Maintaining High Quality of Waters in California*) has increased significantly since the current ag order version 2.0's adoption in 2012. This change is due to State Board and judicial decisions, most notably a court decision, known as the AGUA decision, regarding a Central Valley Water Board dairy order. Based on this decision, all orders, including any new ag order, must include more substantial anti-degradation analysis and potentially findings. Staff is already working on foundational material for revised anti-degradation findings, but anticipates these changes will not be complete in time to include in the proposed 2017 ag order. Instead, as part of the proposed 2017 ag order, staff will provide the status of work on updated anti-degradation findings.

Other Anticipated State Board and Judicial Precedents: Four significant, relevant cases are currently before the State Board or in litigation. The State Board is currently considering a petition of the Central Valley Water Board's ag order for the East San Joaquin Water Quality Coalition. Also, litigation regarding the State Board's order revising the Central Coast Water Board's current ag order version 2.0 is currently in the Court of Appeals (CoastKeeper case). Additionally, there are two cases pending in superior court involving the implementation of the existing ag order version 2.0. The first case involves the approval of the Central Coast Groundwater Coalition workplan and the issue of notification letters only being provided to the Water Board upon request (Zamora case). The second case involves the question of what is considered a trade secret on the Total Nitrogen Applied forms (Triangle/Rava Ranches cases). Depending on the outcomes of those cases, changes to either the existing order or the implementation of the order may be required. If the petition or any of these cases are finalized with sufficient time prior to March 2017, the Central Coast Water Board must include precedential aspects of the decisions in the proposed 2017 ag order.

Cooperative Monitoring: Central Coast Water Board staff will develop a third-party approval process and associated work plan related to monitoring efforts with updated criteria and performance measure expectations. This effort will not be part of the proposed 2017 ag order, but will be a separate effort and approval process. There are currently three third-party groups approved by the Water Board to perform monitoring on behalf of ag order enrollees: Central Coast Water Quality Preservation, Inc., Santa Rosa Creek Valley Cooperative Groundwater Monitoring Program, and Central Coast Groundwater Coalition. Staff anticipates that third-party approvals would take effect for calendar year 2018.

### **Timing and Outreach**

Central Coast Water Board staff's anti-degradation analysis will likely be extensive and comprehensive and, therefore, time and resource intensive. In addition, it is unknown when the State Water Board's East San Joaquin Water Quality Coalition order will be finalized (latest estimates suggest early 2017) or when the courts will reach decisions on litigation associated with the Central Coast Water Board's current ag order version 2.0. If these items are decided with sufficient time prior to March 2017, staff intends to include required modifications within the proposed order version 3.0. Similarly, if our anti-degradation analysis is completed, this too will

be incorporated with proposed 2017 ag order, version 3.0. However, the likelihood is not high for these inclusions as part of the proposed 2017 ag order version 3.0. In addition to the simultaneous development of ag order version 3.0 and anti-degradation components, staff will also continue implementing the current ag order version 2.0.

Staff will likely also propose that the new order have the maximum term allowed (five years) and commit to regular updates with the Board to provide transparency with respect to development of changes mandated by the petition and litigation. Staff will likely also propose bringing a new ag order version 4.0 to the board as soon as is possible while addressing these relevant decisions and mandates.

Central Coast Water Board staff will conduct outreach to stakeholders on the proposed 2017 ag order version 3.0 this summer and fall, in advance of developing a draft order, and has recently initiated discussion of this process with stakeholders. Staff will release a draft order of version 3.0 and accept public comments for at least 30 days in fall 2016. Staff will also provide written updates with each Central Board Water Board meeting agenda prior to March 2017.

### **Other Options**

At least one other option is available to the Central Coast Water Board:

- No action alternative. If the Central Coast Water Board does not renew the current order or adopt a new order, there will be no regulatory coverage of ag waste discharges. Enforcement action and 13267 letters would be the extent of the Central Coast Water Board's authority. This is a highly resource intensive strategy and not a recommended alternative.

### **CONCLUSION**

Staff recommends the process described above as the best option for dealing with the expiring ag order version 2.0. The outstanding litigation and petition detailed above create uncertainty surrounding the process and content of the next proposed ag order, and there is insufficient time between now and March 2017 to comprehensively revise the current order and recommend major modifications. Staff will propose the adoption of ag order version 3.0 implementing new compliance dates, monitoring programs, and other required elements, without a large degree of change from current version 2.0 as the most appropriate action to continue ongoing regulation of agricultural discharges and to create sufficient time to respond to forthcoming mandates from the existing petition and litigation.